IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 690 OF 2007.

Dashrath Jyoti Suryawanshi. ... Petitioner.
Versus.
The Divisional Commissioner,
Pune Division, Pune and others. ... Respondents.

Shri Dilip Bodake for the Petitioner.

Ms.Mhaispurkar, A.G.P. for Respondents Nos.1 to 3.

Shri Machhindra Deshmukh for the Respondents Nos.6 to 13.

CORAM : ABHAY S.OKA, J.

DATED : 3rd May, 2007.

P.C.:

1. Submissions of the learned Counsel appearing for the parties were heard on the last date. The challenge in this petition under Article 227 of the Constitution of India is to the orders passed by the District Collector and the Divisional Commissioner by which no confidence motion passed against the Petitioner has been upheld.

2. The Petitioner was elected as Sarpanch of a village panchayat. A motion of no confidence was passed in a special meeting of the village panchayat. The motion of no confidence was passed as 8 members of the panchayat voted in favour of the motion of no confidence and only one voted against it.

3. The District Collector upheld the legality and

validity of the no confidence motion and in appeal, the order of the District Collector has been confirmed.

4. The first submission of the learned Advocate for the Petitioner is that there is an over-writing in the requisition of no confidence motion as well as in the notice of requisitioned meeting. He submitted that initially on the requisition, the date mentioned was 10th September 2006 and later on the same has been changed to 19th September 2006. The second submission is that a copy of the requisition was not served to the Petitioner along with the notice of the meeting. The third submission is that the Collector and the Commissioner have decided the matters hurriedly without giving adequate opportunity to the Petitioner.

4. In so far as the first submission is concerned, I find that the same was not urged before the Collector. In the Appeal/Application filed by the Petitioner, the said ground was not raised. A perusal of the order passed by the Additional Collector as well as the Divisional Commissioner shows that the said contention which is based on factual aspect was not urged. Therefore, this contention cannot be allowed to be urged in the Writ Petition. So far as the second contention is concerned, the issue is no longer res-integra considering the decision of the learned Single Judge of

this Court in the case of Yamunabai Laxman Chavan and others v/s. Sarubai Tukaram Jadhav and others, (2004 (2) Mah.L.J. 1004). It has been held in the said decision that mere non-furnishing of a copy of requisition to the Sarpanch would not invalidate the requisition as Rule 2(2) of the Bombay Village Panchayat Sarpanch and Upasarpanch (No Confidence Motion) Rules, 1975 is directory in nature. In the present case, the Petitioner was present in the requisitioned meeting and he was allowed to address the meeting on the motion of no confidence. The resolution was passed by a large majority of 8 against 1. Therefore, there is no merit in the second submission of the learned Advocate for the Petitioner.

5. There is no merit in the third submission as it appears that full opportunity was given to the Petitioner of leading evidence by the Collector. The Petitioner has stepped into the witness box and has been cross-examined. Other witnesses have been examined before the Collector. What was before the Divisional Commissioner was an Appeal. It is not the case of the Petitioner that he was not allowed to argue the Appeal on merits.

6. There is no merit in writ petition and the same is rejected.

7. The parties to act on an authenticated copy of this order.

8. At this stage, the learned Advocate for the Petitioner prays for grant of interim relief to enable the Petitioner to challenge the impugned order. Considering the fact that no confidence motion has been passed with a large majority, the prayer for grant of interim relief after rejection of writ petition is rejected.

Judge.